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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-820

MINNESOTA MINING AND MANUFACTURING COMPANY,

Appellant,

vs.

STATE OF MINNESOTA, By WILLIAM L. WILSON, DEPARTMENT OF HUMAN RIGHTS,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

Appellee State of Minnesota moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Minnesota. The grounds for this motion are that the decision of the Supreme Court of Minnesota is clearly correct and that the question raised by appellant is so insubstantial as not to need further argument.

QUESTION PRESENTED

Does the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.*, preempt application of the Minnesota Human Rights Act to employee benefit plans which violate the state act by discriminating on the basis of sex?

STATUTES INVOLVED

The text of 29 U.S.C. § 1144 is set forth in Appendix F to appellant's jurisdictional statement. Pertinent provisions of Minn. Stat. ch. 363 are reproduced as Appendix A to this motion.

STATEMENT OF THE CASE

This is an appeal from a judgment of the Minnesota Supreme Court that appellant Minnesota Mining and Manufacturing Company (3M) violated the Minnesota Human Rights Act, Minn. Stat. ch. 363, by excluding disabilities relating to pregnancy from its otherwise comprehensive income maintenance plan. The Court also determined that the Minnesota Human Rights Act was not preempted by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.*

This matter arose out of a charge of discrimination which one of appellant's employees filed with the Minnesota Department of Human Rights. The employee alleged that 3M engaged in sex discrimination prohibited by the Minnesota Human Rights Act by denying monetary compensation under its comprehensive income maintenance plan for disabilities related to pregnancy. Under its plan, 3M paid monetary benefits to salaried employees who were absent from work because of any

illness or injury which was not related to pregnancy. However, disabilities resulting from pregnancy, childbirth, or their complications were all excluded from the coverage of the plan.

The State of Minnesota by its Department of Human Rights issued a class action complaint and the matter was assigned to an administrative hearing examiner. On cross-motions for summary judgment, the hearing examiner concluded that 3M engaged in illegal sex discrimination but that ERISA preempted the Minnesota Human Rights Act from applying to 3M's employee benefit plan on or after January 1, 1975.

The State of Minnesota and 3M each filed a petition in Minnesota district court for judicial review of the hearing examiner's decision pursuant to Minn. Stat. §§ 15.0424 and 363.072. The district court affirmed the conclusion that 3M engaged in illegal sex discrimination and reversed the hearing examiner's ruling that ERISA preempted the Minnesota Human Rights Act. The Minnesota Supreme Court subsequently affirmed the district court's decision, with slight modifications not at issue in this appeal.

ARGUMENT

I. THE DECISION OF THE MINNESOTA SUPREME COURT THAT ERISA DOES NOT PREEMPT THE MINNESOTA HUMAN RIGHTS ACT IS CLEARLY CORRECT.

3M argues that the Minnesota Supreme Court should have concluded that ERISA preempts all state laws which relate in any way to employee benefit plans. As this Court recently stated, whether a state statute is preempted "depends on the intent of Congress." *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978). Preemption is established only by a showing "either that the nature of the regulated subject matter permits no other conclusion, or that Congress has unmistakably ordained." *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963). As shown hereinbelow, Congress clearly did not intend for ERISA to preempt state fair employment laws.

A. Preemption Of State Fair Employment Statutes Would Impair Title VII.

The Minnesota Supreme Court correctly concluded that, based upon "the important role that Congress preserved for state antidiscrimination laws under Title VII [of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.* (1970 & Supp. V)]," ERISA's express preservation of "federal statutes such as Title VII impliedly preserves state [antidiscrimination] laws which are integrally related to such federal statutes." Appendix to Appellant's Jurisdictional Statement at A-13.

Section 514(d) of ERISA, 29 U.S.C. § 1144(d), provides:

> Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . .

The federal law prohibiting employment discrimination, Title VII, is therefore left intact and unimpaired by ERISA. Moreover, Title VII incorporates and relies upon state statutes such as the Minnesota Human Rights Act. Section 708[1] of Title VII, 42 U.S.C. § 2000e-7, expressly preserves such state laws. Enforcement under Title VII is deferred until there has been an opportunity for proceedings under the state law. 42 U.S.C. § 2000e-5(c), (d).[2] The federal agency which enforces Title VII, the Equal Employment Opportunity Commission (EEOC), must accord substantial weight to the state agency's findings and orders. 42 U.S.C. § 2000e-5(b). The EEOC is also encouraged to cooperate with state agencies. 42 U.S.C. § 2000e-8(b). As the Seventh Circuit stated in *Bucyrus-Erie Co. v. Dept. of Industry, Labor and Human Relations*, 599 F.2d 205, 210-11 (7th Cir.), petition for cert. filed, No. 79-258, 48 U.S.L.W. 3181 (August 16, 1979): "[I]t is clear that the federal scheme embodied in its laws, rules and regulations contemplates and encourages enforcement of state fair employment statutes as an integral component of the federal statutory framework." If ERISA preempted the Minnesota Human Rights Act, ERISA would therefore also alter and impair Title VII's federal framework for eliminating employment discrimination, in violation of 29 U.S.C. § 1144(d).

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[1] Section 708 provides:

> Nothing in this title [VII] shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

[2] 42 U.S.C. §§ 2000e-5(c) and (d) provide for a period of at least 60 days in which state agencies may seek to eliminate alleged discrimination under state law before proceedings begin under Title VII.

B. Congress Did Not Intend For ERISA To Preempt State Fair Employment Laws.

1. Legislative History

The legislative history of both Title VII and ERISA reveals that Congress did not intend for ERISA to preempt state fair employment laws. Amendments to ERISA were introduced in both the House and Senate which would have prohibited discrimination in welfare benefit plans covered by ERISA. However, on the assurance that discrimination could instead be eliminated by the EEOC "under terms of existing law," the amendments were withdrawn. 119 Cong. Rec. 30409-10 (Sept. 19, 1973); 120 Cong. Rec. 4726 (Feb. 28, 1974). Since "existing law" includes the state fair employment statutes relied upon by federal law, it is clear that Congress did not intend ERISA to preempt the state statutes.

Furthermore, the legislative history of Title VII reveals that Congress intended state fair employment laws to continue in operation. In the Senate debates on Title VII, Senator Clark emphasized:

> [T]itle VII is so drafted that the States and the Federal Government can work together. When the bill is enacted, the State and the municipal agencies will continue to operate, and State laws will continue in force, except where they are inconsistent with title VII . . . . The Federal Government and the State governments could cooperate effectively and . . . there would be a saving in the Federal budget in those areas where State laws are effective, discrimination is outlawed, and discriminators are prosecuted.

110 Cong. Rec. 7205 (April 8, 1964).

Finally, the Senate and House Reports to the recent Pregnancy Disability Amendment to Title VII, 92 Stat. 2076, P.L. 95-555,[3] refer to the already existing state laws prohibiting discrimination against pregnant employees by denying them fringe benefits. S.Rep. No. 95-331, 95th Cong., 1st Sess. 3 n. 1 (1977); H.Rep. No. 95-948, 95th Cong., 2d Sess. 11 (1978). As the Seventh Circuit Court of Appeals concluded in *Bucyrus-Erie Co. v. Dept. of Industry, Labor & Human Relations*, 599 F.2d 205, 212 (7th Cir.), petition for cert. filed, No. 79-258, 48 U.S.L.W. 3181 (August 16, 1979):

> [I]t is clear that Congress passed pregnancy disability legislation with the assumption that state pregnancy disability laws were in full effect. We construe this as further evidence that state fair employment laws were considered to be fully embedded in the Title VII scheme for eradicating employment discrimination.

2. Regulatory Void

The regulatory void which would result if ERISA preempted state fair employment laws also shows that Congress did not intend to invalidate state antidiscrimination statutes. For example, employers with fewer than 15 employees are not subject to Title VII. 42 U.S.C. § 2000e(b). Thus, if state antidiscrimination statutes were preempted, these employers would be legally free to exclude black employees, because of their race, from fringe benefits granted to white employees. As the Minnesota Supreme Court stated: "We cannot believe that Congress intended to create a regulatory void where discrimination by such employers could not be prohibited by the states any time ERISA is involved." Appendix of Appellant's Jurisdictional Statement at A-13.

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[3] The act amends Title VII to prohibit discriminating against pregnant employees by denying them fringe benefits.

C. State Antidiscrimination Statutes Do Not Create Any Problem Of Inconsistent State Regulation.

3M appears to argue that ERISA should be interpreted to preempt state antidiscrimination statutes because Congress wished to "protect national employers from inconsistent state regulation of employee benefit plans." Jurisdictional Statement at 6. However, the decision of the Minnesota Supreme Court does not subject 3M to inconsistent state regulation. Compliance with the Minnesota Human Rights Act would not have required 3M to violate any federal laws or the statutes of any state. Although Title VII and the statutes of some states may not have required payment of disability benefits to workers disabled by pregnancy, they certainly did not prohibit such payments. Thus, 3M would not have been faced with conflicting obligations.

Furthermore, the Minnesota Human Rights Act does not now require 3M to conduct its benefits plan differently than 3M would otherwise be required to do. Since April 29, 1979, Title VII has also prohibited 3M from excluding disabilities related to pregnancy from its benefit plan. 92 Stat. 2076, P.L. 95-555. Thus, there is no basis upon which to conclude that enforcement of the Minnesota Human Rights Act would subject 3M to inconsistent or conflicting requirements.

II. THE DECISION OF THE MINNESOTA SUPREME COURT IS CONSISTENT WITH THE MAJORITY OF THE DECISIONS CONCERNING ERISA PREEMPTION OF STATE ANTIDISCRIMINATION LAWS.

3M claims that the ruling of the Minnesota Supreme Court is contrary to the decisions of *Pervel Industries Inc. v. Connecticut Commission on Human Rights*, 603 F.2d 214 (2nd Cir.), *pet. for cert. filed*, No. 79-107, 48 U.S.L.W. 3025 (July 23, 1979) and *Hewlett-Packard Co. v. Barnes*, 571 F.2d 502 (9th Cir. 1978). However, the decision of the Minnesota Supreme Court is clearly consistent with the majority of decisions concerning ERISA preemption of state fair employment statutes and may be easily reconciled with *Pervel* and *Hewlett-Packard*.

The overwhelming majority of the courts which have considered whether ERISA preempts state fair employment laws have decided that such state laws are not preempted. In concluding that ERISA does not preempt the Wisconsin fair employment statute, the Seventh Circuit Court of Appeals summarized the basis for the decisions of these courts:

> [T]he balance of the evidence suggests that Congress did not intend to preempt state fair employment laws since such preemption would "alter, amend, modify . . . (or) impair" the federal framework for prohibiting employment discrimination [in violation of Section 514(d) of ERISA].

Bucyrus-Erie Co. v. Dept. of Industry, Labor & Human Relations, 599 F.2d 205, 213 (7th Cir.), petition for cert. filed, No. 79-258, 48 U.S.L.W. 3181 (August 16, 1979). Furthermore, as emphasized by the Oregon Court of Appeals, preemption of state antidiscrimination statutes by ERISA would "create

an enormous regulatory vacuum in areas that traditionally have been matters of vital state concern." *Gast v. Oregon*, 36 Or. App. 441, 585 P.2d 12, 23 (1978).

Numerous other courts have reached these same conclusions and rejected the argument being raised by 3M that ERISA preempts state fair employment statutes. *Brown Co. v. Dept. of Industry, Labor and Human Relations*, No. 77-C-29 (W.D. Wis., Aug. 28, 1979); *Illinois Bell Tel. Co. v. Fair Employment Practices Commission*, 68 Ill. App. 3d 829, 386 N.E.2d 599 (Ill. Ct. Apps., 1979); *Mountain States Telephone and Telegraph Co. v. Commissioner of Labor and Industry*, Case No. 14557, 21 FEP Cases 212 (Mont., Oct. 22, 1979); *Liberty Mut. Ins. Co. v. State Div. of Human Rights*, 61 A.D. 2d 822 (N.Y. Sup. Ct., App. Div., 1978); *Westinghouse Electric Corp. v. State Human Rights Appeal Board*, 60 A.D. 2d 943 (N.Y. Sup. Ct., App. Div., 1978), *cert. denied*, No. 78-758, 47 U.S.L.W. 3441, 3455 (Jan. 8, 1979); *St. Vincent's Medical Center of Richmond v. State Human Rights Appeal Board*, 59 A.D. 2d 778 (N.Y. Sup. Ct., App. Div., 1977), *cert. denied*, No. 78-592, 47 U.S.L.W. 3394, 3455 (Jan. 8, 1979); *Lukus v. Westinghouse Electric Corporation*, No. GD 77-14803 (Ct. Comm. Pleas. for Allegheny Co., Pa., April 20, 1978); *Goodyear Tire & Rubber Company v. Department of Industry, Labor and Human Relations*, 87 Wis. 2d 56, 273 N.W.2d 786 (Wis. Ct. Apps., 1978); *Time Insurance Co. v. Department of Industry, Labor and Human Relations*, Case No. 154-423, 16 FEP Cases 391 (Dane Co. Cir. Ct., Wisc., Jan. 3, 1978); *contra, Pervel Industries Inc., v. Connecticut Commission of Human Rights*, 603 F.2d 214 (2d Cir., April 23, 1979), *pet. for cert. filed*, No. 79-107, 48 U.S.L.W. 3025 (July 23, 1979); *American Chain v. Iowa Civil Rights Commission*, Case No. CE 6-2938, 21 FEP Cases 224 (Polk Cty. D.Ct., Iowa, June 28, 1978).

Furthermore, the decision of the Second Circuit in *Pervel Industries Inc. v. Connecticut Commission on Human Rights, supra*, does not conclude that state fair employment laws are presently preempted by ERISA. Instead, the court stated in its brief unpublished opinion:

> This case arose before the amendment of Title VII in October 1978 by the Pregnancy Disability Act . . . At that time state statutes . . . were preempted by ERISA 'insofar as they may . . . relate to any employee benefit plan.' 29 U.S.C. § 1144(a).

Thus, the decision implies that state fair employment laws are no longer preempted.

Finally, *Hewlett-Packard v. Barnes*, 571 F.2d 502 (9th Cir. 1978) does not involve a state fair employment statute. Instead, the court in that case concluded that ERISA preempts a state statute which attempted to regulate funding and disclosure in benefit plans. Since these areas are the focus of ERISA, ERISA is clearly intended to preempt state regulation of them. Thus, *Hewlett-Packard* is not inconsistent with the ruling of the Minnesota Supreme Court that ERISA does not preempt subjects not regulated by ERISA such as race and sex discrimination.

CONCLUSION

The decision of the Minnesota Supreme Court is obviously correct and appellant has not raised any substantial question to be decided by this Court.

We respectfully submit that the Court should dismiss this appeal or, in the alternative, affirm the judgment entered by the Minnesota Supreme Court.

Respectfully submitted,

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APPENDIX

APPENDIX A

Minn. Stat. § 363.03, subd. 1 (1976):

363.03 UNFAIR DISCRIMINATORY PRACTICES. Subdivision 1. Employment. Except when based on a bona fide occupational qualification, it is an unfair employment practice:

. . . .

(2) For an employer, because of . . . sex . . .,

. . . .

(c) to discriminate against a person with respect to his hire, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.

. . . .

Minn. Stat. § 363.01, subd. 29 (1978):

Subd. 29. Sex. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

Minn. Stat. § 363.03, subd. 1 (1978):

363.03 UNFAIR DISCRIMINATORY PRACTICES. Subdivision 1. Employment. Except when based on a bona fide occupational qualification, it is an unfair employment practice:

. . . .

(2) For an employer, because of . . . sex . . .,

. . . .

(c) to discriminate against a person with respect to his hire, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.

. . . .

(5) For an employer, an employment agency or a labor organization, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work.